IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6543 of 1987

with

SPECIAL CIVIL APPLICATION No 2681 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI B PATEL

Versus

CHAIRMAN B.K/MEHSANA GRIMAN BANK

Appearance:

1. Special Civil Application No. 6543 of 1987
MR JAL UNWALA for MR PK JANI for Petitioners
MR RAJESH DESAI for Respondent

2. Special Civil Application No 2681 of 1987
MR JAL UNWALA for MR PK JANI for Petitioners
MR RAJESH DESAI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. It is not in dispute that the respondent-Bank vide advertisement in daily newspaper dated 9th December, 1984 invited applications for appointment to the posts of Branch Managers/Officers/Field Supervisors and Cashier-cum-Clerk. In response to that advertisement, the petitioners in both these petitions as well as the persons namely, Krishnakant Shivprasad Gupta, Jagdish K. Shah and one more person have also applied for the post of Branch Manager. All these persons were called for written test and when they succeeded in the written test they were also called for the interview. The merit list of the selected candidates was prepared in which admittedly the names of the petitioners are at Sr. No.42, 44 and 46 respectively whereas the names of those three persons who have been given the appointments stood at Sr. Nos. 47, 48 and 51 i.e. below the petitioners. The petitioners were given out by the Bank that their names are there in the select list and they will be called for services with a notice of 10 to 15 days as and when their services are required.

3. Learned counsel for the petitioners contended that the action of the Bank to give appointments to those three persons who stood lower in merits than the petitioners in the merit list prepared by the Bank is not only arbitrary but violative of Articles 14 and 16 of the Constitution of India. It has next been contended that even if it is taken that those three persons have experience of this very Bank as being in-service candidates and that has been taken into consideration but the Selection Committee has not thought it fit to place them higher than the petitioners in the merit list. Prayer has been made in the petition for direction to the Bank to give appointments to the petitioners on the post of Branch Managers-Officers.

4. Learned counsel for the Bank, on the other hand, contended that more important in the Bank services is the experience of the employees/officers as they have to provide service to the customers. The branches where those three persons were posted are in rural areas and as those persons have the experience of working in rural areas in the clerical cadre of the bank, they have been preferred and appointments have been given to them. Next contention is raised that as this merit list has been

scrapped from December, 1996 and it is now no more in existence, this Court may not give any relief to the petitioners. Further it is contended that now the recruitment to the services of the Bank is to be made through B.S.R.B. (Board) from January, 1987. Carrying this contention further, Shri Desai contended that 50 appointments were to be made and all 50 appointments are made and if any appointment is made now on the direction of this Court it will be violative of existing recruitment rules. Lastly, it is contended that this petition suffers from the vice of delay and laches as well as non-joinder of necessary parties.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. It is true that the petitioners stood higher in merits than those three persons and the appointments given to those persons may be contrary to the provisions of Articles 14 and 16 of the Constitution. The justification given by the Bank for appointment of those three persons who stood lower in merits than the petitioners in preference to the petitioners is wholly unjustified and arbitrary. Even if those persons were in-service candidates and having experience of bank services that would have been taken into consideration by the Selection Committee. Even after considering the same, they have not been considered more meritorious than the petitioners and accordingly position has been assigned to them in the select list below the petitioners. However, no relief in this petition can be granted to the petitioners for the reason that those persons have not been impleaded as party. Those persons were necessary party to this petition. All the posts which are to be filled in have been filled in and unless those appointments are quashed, the petitioners cannot be given the appointments. In the absence of those persons and further in the absence of challenge to the order of appointments of those persons, this relief cannot be granted. I find sufficient merits in the contention of the learned counsel for the respondent that this petition suffers from the vice of delay and laches as well as non-joinder of necessary parties. The petitioners claim that they stand on higher merits than those three persons who were given appointments cannot be decided behind the back of those persons. In case what the petitioners are praying is granted then it may adversely affect the right of those persons who are now in service for last more than about 13 years. In the absence of those persons, the grounds raised cannot be decided otherwise any decision given in favour of the petitioners will result

in decision against the basic principles of fairplay and natural justice. Those persons were in-service candidates and they have been given the appointments. Otherwise also, when those persons have not been impleaded as party, all the 50 posts were filled in even if the claim of the petitioners is accepted without quashing those appointments they cannot be granted any relief. In the absence of those persons as well as challenge to their appointment order, this relief cannot be granted. This petition has been filed in the year 1987 and after 13 years of the filing thereof, if any amendment is permitted in the petition, it will certainly be a cause to be pleaded by the petitioners without there being any explanation for this inordinate delay.

7. In the result, both these petitions fail and the same are dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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